

Message Text

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ACTION ABF-01

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FM AMEMBASSY MONTEVIDEO

TO SECSTATE WASHDC 7490

C O N F I D E N T I A L SECTION 1 OF 2 MONTEVIDEO 2939

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E.O. 11652: GDS

TAGS: AFSP, PINS, MASS, UY

SUBJECT: GAO REVIEW AS RELATED TO SECTION 112 OF FAA

1. DURING GAO REVIEW HERE OF U.S. ASSISTANCE TO FOREIGN COUNTRIES IN SUPPORT OF POLICE ORGANIZATIONS, LAW ENFORCEMENT AND PUBLIC SAFETY, TEAM ALSO DEVOTED CONSIDERABLE TIME TO WHETHER ANY OTHER AGENCY (SPECIFICALLY VIA MAP PROGRAM) HAD PICKED UP FORMER OFFICE OF PUBLIC SAFETY FUNCTIONS. THIS ASPECT RELATES TO SECTION 112 OF FAA AND IS SEPARATE ISSUE FROM THAT OF "POLITICAL PRISONERS" RAISED INITIALLY IN MVD 2665 AND FOLLOWED BY MVC 2726.

2. GAO TEAM THEREFORE CENTERED QUESTIONS ON WHETHER MAP PROGRAM IN URUGUAY INVOLVED GIVING ASSISTANCE TO MILITARY UNITS WHICH HAVE AN ON-GOING CIVILIAN LAW ENFORCEMENT FUNCTION. TEAM LEADER PRESENTED MEMORANDUM TO MILGRP COMMANDER AND REQUESTED HIS WRITTEN COMMENTS. IN VIEW OF LACK OF CLEAR DEFINITION AND INTERPRETATION ON OUR PART AND ON THAT OF GAO TEAM OF WHAT CONSTITUTES CIVILIAN LAW ENFORCEMENT, TEAM LEADER SUGGESTED THAT HIS MEMORANDUM AND MILGRP PROPOSED COMMENT BE REFERRED TO USCINCSO FOR REVIEW STATING HE WOULD LIKE TO HAVE CINCSO CONFIRMATION OF INTERPRETATION. THIS WAS DONE AND USCINCSO SUBSEQUENTLY INSTRUCTED MILGRP COMMANDER NOT RPT NOT TO RESPOND TO QUESTIONS. EXCHANGE OF MESSAGES FOLLOWS:

3. COMUSMILGRP MESSAGE TO USCINCSO OF SEPT 23: QUOTE QUOTED
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BELOW IS REQUEST FOR COMMENT MADE TO THIS GROUP BY GAO TEAM.

SUBJ: APPLICABILITY OF SEC. 112 OF THE FOREIGN ASSISTANCE ACT OF 1973 TO ELEMENTS OF THE URUGUAYAN ARMED FORCES. AS WE DISCUSSED PREVIOUSLY, IT IS NOT ALTOGETHER CLEAR WHETHER CONSIDERING THE CURRENT AUTHORITY OF THE URUGUAYAN ARMED FORCES IN THE AREA OF LAW ENFORCEMENT, VARIOUS ELEMENTS OF THE MILITARY IN URUGUAY FALL WITHIN THE SCOPE OF THE SEC. 112 PROHIBITION. IT MAY BE THAT THE PROHIBITION IS APPLICABLE TO INDIVIDUAL UNITS OF THE GOU ARMY, NAVY AND AIR FORCE OR, POSSIBLY, TO THE GOU ARMED FORCES IN GENERAL.

THE ATTACHMENT SUMMARIZES SOME OF THE MATERIAL WE HAVE CONSIDERED BEFORE REACHING THE CONCLUSION THAT IT IS UNCLEAR WHETHER THE SEC. 112 PROHIBITION IS APPLICABLE TO ELEMENTS OF THE URUGUAYAN ARMED FORCES, WITH THE EXCEPTION OF MARITIME POLICE. WITH RESPECT TO THE LATTER UNIT, IT IS CLEAR THAT IT HAS LAW ENFORCEMENT AUTHORITY AND, BECAUSE OF THIS, IS NOT ELIGIBLE FOR MAP ASSISTANCE.

WE WOULD APPRECIATE ANY COMMENTS WHICH YOU MIGHT HAVE ON THE SUBJECT OF THIS MEMORANDUM.

THANK YOU FOR YOUR COOPERATION. JAMES D. VANBLARCOM, GAO REPRESENTATIVE.

QUOTED BELOW IS ATTACHMENT TO REQUEST NOTED PARA 1 ABOVE:

"ATTACHMENT TO GAO MEMORANDUM DATED 9/20/74

I FOREIGN ASSISTANCE ACT OF 1973

A. (U) SEC. 112 STATES, IN PART: NO PART OF ANY APPROPRIATION MADE AVAILABLE TO CARRY OUT THIS ACT SHALL BE USED TO CONDUCT ANY POLICE TRAINING OR RELATED PROGRAMS IN A FOREIGN COUNTRY.

II SECDEF MESSAGE 9766

A. (C) MAP AND SECURITY ASSISTANCE FUNDS ARE SUBJECT TO THIS PROHIBITION AS WELL AS OTHER FUNDS AVAILABLE TO CARRY OUT THE FAA.

B. (C) ASSISTANCE IN FOREIGN COUNTRIES UNDER THE FAA FOR ALL PHASES OF LAW ENFORCEMENT IS PROHIBITED. LAW ENFORCEMENT INCLUDES APPREHENSION AND CONTROL OF POLITICAL OFFENDERS AND OPPONENTS OF NERNMENT POWER (OTHER THAN PRISONERS OF WAR) AS WELL AS PERSONS SUSPECTED OF SO-CALLED COMMON CRIMES.

C. (C) ASSISTANCE IS PROHIBITED TO UNITS WHICH HAVE A LAW ENFORCEMENT FUNCTION AS WELL AS A COMBAT FUNCTION. CONSEQUENTLY, ENACTMENT OF SUBJECT PROVISION UNDER THIS CRITERION MAY REQUIRE TERMINATION OF MAP SUPPORT TO PARTICULAR UNITS OF FOREIGN FORCES
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IN SOME COUNTRIES.

III SECDEF MESSAGE 9245

A. (U) PROHIBITION APPLIES TO ALL MAP SUPPORT TO ANY UNIT WHICH IS ACTIVELY ENGAGED IN OR SUPPORTS LAW ENFORCEMENT FUNCTIONS EVEN THOUGH THE LAW ENFORCEMENT FUNCTION CONSTITUTES ONLY ONE OF MANY FUNCTIONS PERFORMED BY THE UNIT. IT PROHIBITS THE FURNISHING OF ANY MILITARY ASSISTANCE TO ANY SUCH UNIT EXCEPT FOR TRAINING IN THE U.S.

IV STATUS OF URUGUAYAN ARMED FORCES RELATIVE TO LAW ENFORCEMENT.

A. (U) BASED ON THE LAW OF NATIONAL SECURITY OF JULY 1972 (STILL IN EFFECT) AND THE PRESIDENTIAL DECREE OF JUNE 1973, IT APPEARS THAT THE URUGUAYAN ARMED FORCES HAVE THE AUTHORITY TO ARREST, TRY AND IMPRISON INDIVIDUALS FOR "CIVILIAN" OFFENSES.

3. I INTEND TO RESPOND TO THEIR REQUEST IN THE FOLLOWING MANNER:

A. I HAVE RECEIVED YOUR REQUEST AND BEFORE ADDRESSING IT I WANT TO BRIEFLY DISCUSS PREVIOUS INFORMATION AND GUIDANCE WHICH IS THE BASE UPON WHICH SUBSEQUENT DECISIONS HAVE BEEN MADE.

A.1. THE HOUSE OF REPRESENTATIVES CONFERENCE REPORT ON THE 1973 FOREIGN ASSISTANCE ACT MADE IT CLEAR THAT THE INTENT OF CONGRESS TO ELIMINATE THOSE PROGRAMS BEING CONDUCTED BY AID IN THE PUBLIC SAFETY AREA AND TO INSURE THAT THESE SAME PROGRAMS WERE NOT TRANSFERRED TO SOME OTHER AGENCY. THE FOLLOWING QUOTATION IS EXTRACTED FROM THAT REPORT:

"FURTHER, IT IS THE INTENT OF CONGRESS THAT PRESENT PROGRAMS BEING CONDUCTED BY THE AGENCY FOR INTERNATIONAL DEVELOPMENT IN FOREIGN COUNTRIES SHOULD NOT BE TRANSFERRED TO SOME OTHER AGENCY OF THE GOVERNMENT IN ORDER TO AVOID THIS PROHIBITION. THE NEW LANGUAGE IS MEANT TO PHASE OUT SUCH PROGRAMS FINANCED HEREUNDER AND THE OBJECTIVE SHOULD NOT BE CIRCUMVENTED BY USING OTHER FUNDS FOR SUCH PURPOSES."

A.2. SECDEF MSG (C) 282331Z JAN. 74 CLEARLY STATES:

"IF ANY NUMBER OF PERSONNEL FROM A SMALLER UNIT WITHIN A LARGER MAP SUPPORTED UNIT(SUCH AS A DIVISION) ARE REGULARLY DETAILED TO PERFORM LAW ENFORCEMENT FUNCTIONS, THEN ONLY THAT SMALLER UNIT IS PROHIBITED FROM RECEIVING MAP SUPPORT; THE REMAINDER OF THE LARGER UNIT(DIVISION) WOULD NOT BE SUBJECT TO THIS PROHIBITION. THE PROHIBITION ON SUPPORT TO UNITS WITH A POLICE FUNCTION DOES NOT APPLY WHEN THE UNIT HAS ONLY A CONTINGENCY LAW ENFORCEMENT FUNCTION."

A.3. WITHIN URUGUAY THIS INSURGENT PROBLEM LED TO A DECLARATION OF A "STATE OF INTERNAL WAR" ON 16 MAY 72 AND A NATIONAL CONFIDENTIAL

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SECURITY LAW WAS PASSED BY THE LEGISLATIVE IN JULY 72 WHICH REPLACED PREVIOUS SECURITY MEASURES AND TERMINATED THE STATE OF INTERNAL WAR. IN MAY 73 THE PRESIDENT OF URUGUAY, USING HIS EXECUTIVE DECREE POWERS, EXTENDED THE CONSTITUTIONALLY PROVIDED "EMERGENCY SECURITY MEASURES." IN THESE MEASURES, ARE INCLUDED THE ARREST OF PERSONS PRESUMPTIVELY INVOLVED IN SUBVERSIVE ACTIVITIES, IN ILLICIT ECONOMIC ACTIVITIES AND OF PUBLIC EMPLOYEES WHO IN ANY WAY HARM THE NATIONAL PATRIMONY. THE URUGUAYAN SUPREME COURT UPHELD THIS ACTION AS CONSTITUTIONAL IN A 3 TO 2 DECISION.

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ACTION ABF-01

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C O N F I D E N T I A L SECTION 2 OF 2 MONTEVIDEO 2939

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B. IN REFERENCE TO YOUR MEMORANDUM THE FOLLOWING POINTS APPLY:

B.1. THERE HAVE BEEN NO TRANSFERS OF ANY PUBLIC SAFETY PROGRAMS TO THE MILITARY IN URUGUAY WHICH WOULD VIOLATE EITHER THE SPIRIT OR THE LETTER OF THE U.S. CONGRESSIONAL INTENT NOTED IN A.1 ABOVE.

B.2. THERE IS NOT NOW NOR HAS THERE BEEN IN THE PAST TWO YEARS ANY DIRECT MAP SUPPORT RENDERED TO A UNIT HAVING LAW ENFORCEMENT FUNCTIONS. SHOULD THERE BE A UNIT ELIMINATED FROM MAP SUPPORT BY THE PROVISIONS OF SEC. 112, INDIRECT SUPPORT WOULD NOT BE THE ELIMINATING FACTOR. GUIDANCE RECEIVED (A.2 ABOVE) RECOGNIZES THAT CERTAIN INDIRECT SUPPORT WOULD BE PRESENT. FOR EXAMPLE, ALL MILITARY UNITS IN URUGUAY, OR ELSEWHERE, RECEIVE MEDICAL SUPPORT, A FORM OF INDIRECT ASSISTANCE.

B.3. IN AN ATTEMPT TO CLEAR UP THE DEFINITION OF WHAT CONSTITUTES LAW ENFORCEMENT, WE DISCUSSED SUCH TERM AS "PROMPT SECURITY MEASURES" USING THE HYPOTHETICAL CASE OF A NEW COUNTRY. YOU INDICATED THAT IF THESE "MEASURES" WERE INITIALLY PROVIDED FOR UNDER MILITARY LAW, THIS WOULD BE CLEAR CUT AND THESE "MEASURES" WOULD NOT BE A PART OF CIVIL LAW, NOT A PART OF NORMAL LAW ENFORCEMENT. IN URUGUAY THE "EMERGENCY SECURITY MEASURES" HAVE REDEFINED CRIMES SUBJECT TO MILITARY LAW RATHER THAN CIVIL LAW. AS NOTED IN A.3. ABOVE THIS DECISION WAS UPHELD BY THE URUGUAYAN SUPREME COURT. I SEE NO DIFFERENCE BETWEEN ONE COUNTRY STARTING OFF WITH THESE "MEASURES" AS A PART OF MILITARY LAW AND ANOTHER LATER PLACING THEM UNDER MILITARY LAW BY CONSTITUTIONAL MEANS. THE KEY FACTOR IS THE CONSTITUTIONALITY. I THEREFORE BELIEVE THAT THESE

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CHANGES UNDER THE "EMERGENCY SECURITY MEASURES" ARE NOT PART OF NORMAL POLICE FUNCTIONS AND CANNOT BE TERMED NORMAL LAW ENFORCEMENT.

E. WITH RESPECT TO YOUR FINAL STATEMENT (PARAGRAPH IV(A) OF ATTACHMENT TO YOUR LIST OF COMMENTS WHICH STATES THE "URUGUAYAN ARMED FORCES HAVE THE AUTHORITY TO ARREST, TRY AND IMPRISON INDIVIDUALS FOR CIVILIAN OFFENSES", THIS APPEARS TO BE AN OVER-GENERALIZATION WHICH OVERLOOKS THE MILITARY COURT SYSTEM LEGALLY ESTABLISHED AS OPPOSED TO THE AUTHORITY TO ARREST. WE MUST ALSO DEFINE MORE PRECISELY YOUR USE OF THE PHRASE "CIVILIAN OFFENSES."

D. AFTER A THOROUGH REVIEW OF SEC. 112 WE CONTINUE TO BELIEVE WE ARE NOT IN VIOLATION OF ANY OF ITS PROVISIONS. THE NATURE OF SOME OF THE QUESTIONS PRESENTED DURING YOUR REVIEW IMPLY A SOMEWHAT DIFFERENT UNDERSTANDING OF THE INTENT OF THE U.S. CONGRESS AS WELL AS A LACK OF A CLEAR DEFINITION OF LAW ENFORCEMENT FUNCTIONS. ALTHOUGH OUR DISCUSSIONS HAVE NOT CHANGED MY VIEWPOINT, THEY DO POINT UP THE NEED FOR A CLEAR DEFINITION OF LAW ENFORCEMENT AND THE INTENDED APPLICATION OF SEC. 112. PENDING RECEIPT OF SUCH CLARIFICATION, I ANTICIPATE NO REQUIREMENT TO CHANGE OUR DIRECTION."

PRIOR TO MY PRESENTING PARA. 3 ABOVE TO THE GAO TEAM, REQUEST YOUR REVIEW, CONCURRENCE, AND/OR ADDITIONAL GUIDANCE BY PRIORITY MSG. GAO TEAM SCHEDULED TO CLOSE OUT THEIR REVIEW HERE THURSDAY 26 SEPT. 74.

CHARGE AGREES WITH ABOVE ANALYSIS. UNQUOTE

4. USCINCSO RESPONDED WITH SECDEF INTERPRETATIONS OF SECTION 112 OF FAA AND ASKED MILGRP REVIEW ITS PROPOSED WRITTEN RESPONSES IN LIGHT THOSE INTERPRETATIONS.

5. MILGRP THEN SENT FOLLOWING MESSAGE SEPT. 26 TO USCINCSO: QUOTE: ON BASIS OF OUR REVIEW OF REF. B AND AS SUGGESTED

PARA 2 OF REF. A, AND ALTHOUGH FORMER DOES NOT IN OUR VIEW CONTAIN PRECISE DEFINITION OF "CIVILIAN LAW ENFORCEMENT FUNCTION", WE STILL CONCLUDE BASED ON OUR INTERPRETATION AND UNDERSTANDING OF LOCAL CIRCUMSTANCES, THAT WITH THE EXCEPTION OF "PREFECTURE MARITIMA" (NOT MAP RECIPIENT), UNITS OF URUGUAYAN ARMED FORCES ARE NOT ENGAGED IN ONGOING CIVILIAN LAW ENFORCEMENT FUNCTIONS. IT IS POSSIBLE THAT THE URUGUAYAN AIR FORCE "SECURITY FORCE" AND THE NAVY'S "CUERPO DE FUSELEROS"(NEITHER OF WHICH ARE MAP RECIPIENTS) MIGHT ALSO

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BE CLASSIFIED IN THE SAME CATEGORY AS THE "PREFECTURE MARITIMA". WE BELIEVE THAT WE SHOULD NOW BE AUTHORIZED TO ANSWER QUESTIONS AS OUTLINED IN REF. C WITH THE FOLLOWING MODIFICATIONS;

A. DELETE LAST SENTENCE OF PARA. 3.D. REF. C AND REPLACE WITH SUBPARA B BELOW.

B. "THE MAP ELEMENT CODES WHICH HAVE NOT BEEN USED IN THE PAST

TWO YEARS FOR THE PREFECTURA MARITIMA" (ZNBA) AND THE AIR FORCE SECURITY FORCE (3MBH) WILL BE DELETED. THIS WOULD NOT CONSTITUTE CHANGE IN DIRECTION BUT WOULD CONFIRM ACTION PREVIOUSLY TAKEN.

THE CHARGE D'AFFAIRES CONCURS IN THE ABOVE ANALYSIS. UNQUOTE

6. USCINCSO RESPONDED SEPT. 27 WITH THE FOLLOWING- QUOTE:

WE UNDERSTAND YOUR DESIRE TO BE AS RESPONSIVE AS POSSIBLE TO THE GAO REQUEST FOR COMMENT. HOWEVER, THE QUESTIONS RAISED ARE NOT PECULIAR TO URUGUAY BUT WILL AFFECT THE LATAM REGION AS A WHOLE. THESE ISSUES INVOLVE EXTREMELY TECHNICAL LEGAL AND POLITICAL INTERPRETATIONS OF SECTION 112, SUCH AS QUOTE INDIRECT SUPPORT UNQUOTE WHICH APPARENTLY HAVE NOT BEEN RAISED BEFORE. IN THE OPINION OF THIS HEADQUARTERS, INCLUDING THE LEGAL ADVISOR, YOUR DETAILED REPLY MAY NOT RAISE THE MOST SUCCESSFUL THEORIES ON BEHALF OF ALL LATAM NATIONS FACING SIMILAR PROBLEMS. UNQUOTE

7. WE HAVE NOW BEEN INFORMED BY COL. THOMAS (VISITING HERE) OF GENERAL WALLACE'S OFFICE (OASD-ISA), THAT GAO HAS TAKEN THE MATTER UP WITH DOD AND EXPRESSED SOME IRRITATION THAT MILGRP COMMENTS WERE NOT GIVEN TO THEM DURING THEIR VISIT HERE. COL. THOMAS IS REPEATING ALL MESSAGES TO GENERAL WALLACE IN ORDER THAT STATE/DOD DISCUSSIONS CAN TAKE PLACE ON THIS ISSUE WHICH CARRIES WITHIT MUCH BROADER IMPLICATIONS FOR MAP PROGRAM WOULD-WIDE THAN SIMPLE REVIEW OF MILITARY'S ROLE IN LAW ENFORCEMENT IN URUGUAY. WE ALSO REPEATING FOR STATE COMUSMILGP URUGUAY 111429Z OCT. 74 SENT EXCLUSIVE FOR GENERAL WALLACE FROM COL. THOMAS. SIRACUSA

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